

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7482 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ZIYAUDDIN MOINUDDIN KAZI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7482 of 2004
MS HINA DESAI for Petitioner No. 1
MR RC KODEKAR APP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/09/2004

ORAL JUDGEMENT

The present petition has been filed by the petitioner-detenu, who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act

of 1985") by order dated 17th December, 2003 passed by the Police Commissioner, Surat, and he has been declared as dangerous person.

2. The grounds of detention indicate that the detaining authority took into consideration 3 offences registered against the detenu which have been registered against the detenu. The first complaint being C.R.No.I 121 of 2002 was registered with Randher Police Station on 10.5.2002 for the offence punishable under Section 379 read with Section 114 of IPC. The second offence being C.R. No.I 79 of 2003 was registered with Randher Police Station for the offences punishable under Section 379 and 114 of IPC on 21st March, 2003 whereas the third offence being C.R.No.I 273 of 2003 was registered with Umra Police Station, on 17.7.2003 for the offence punishable under Section 379 and 114 of the Indian Penal Code. While passing the order of detention, the detaining authority has also taken into consideration and statements of 2 anonymous witnesses involving the petitioner in criminal offences. The authority found that the activities of the detenu are detrimental to public order. The authority therefore branded the petitioner as a dangerous person as defined under the PASA Act. The authority considered the possibility of resorting to lesser drastic remedy under the ordinary law, but came to a conclusion that resorting to lesser drastic remedy under ordinary law may not serve the purpose and immediately preventing the petitioner from pursuing his activities whereas he is immediately required to be prevented from pursuing his activities and, therefore, detention under PASA is the only remedy available with the detaining authority that can be resorted to.

3 The petitioner in this petition under Article 226 of the Constitution of India challenges the order of detention on various grounds. However, learned advocate Ms Heena Desai, appearing for the petitioner, has restricted her arguments to two grounds, namely, that the authority has passed order of detention on the basis of three criminal cases which have been registered against him and the last offence which has been taken into consideration by the detaining authority is of 17th July, 2003 while the authority has passed the order of detention on 17.12.2003 and there is a delay of 5 months in passing the order of detention, and therefore, the petitioner is required to be set at liberty forthwith. In support of the contention, learned counsel for the petitioner has placed reliance on a decision of the case of Elesh Nandubhai Patel v. Commissioner of Police,

Ahmedabad city and others, reported in 1997 G.L.H. (1) 381 wherein it is held as under :

" In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2)Suppli. SCC 61."

The learned counsel for the petitioner has next contended that when the order of detention was passed, the petitioner was in judicial custody and, therefore, the satisfaction recorded by the detaining authority for the need for immediate exercise of powers under Section 3 of the PASA Act cannot be considered as genuine. She has pressed into service the decision of the Apex Court in the case of Amritlal and others v. Union Government through Secretary, Ministry of Finance and others reported in A.I.R. 2000 S.C. 3675. It is submitted that the petition therefore, may be allowed.

4. The petition is opposed to by learned A.P.P. Mr. R.C.Kodekar.

5. Having regard to the contentions raised before this Court, a plain reading of grounds of detention indicate that the petitioner was in judicial custody when the order was passed. The authority, however, observed that he may obtain bail and on being released on bail may

pursue his activities and, therefore, recorded a satisfaction for exercise of powers under Section 3. The Apex Court in the case of Amritlal and others (Supra) has observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The Apex Court observed that the inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention. The Apex Court distinguished the likelihood of detenu moving an application for bail from the likelihood of being released on bail. In the instant case, as can be seen, there appears not anything to indicate that the petitioner had moved an application or any such order was passed. The inference that the petitioner while in custody may obtain bail is therefore, without any cogent material. The authority could not have drawn such an inference in absence of material. The satisfaction recorded by the authority for need of exercise of powers under Section 3 on this material therefore, vitiate the satisfaction and consequently the detention. The petition, therefore, deserves to be allowed.

6. The petition is allowed. The order of detention dated December 17, 2003, passed by the Commissioner of Police, Surat, is quashed and set aside. The petitioner-detenu, Ziyauddin Moinuddin Kazi be released from detention forthwith if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(R.P.Dholakia, J.)

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